WP(C) 6308/2006
BEFORE
THE HON'BLE MR JUSTICE B.K. SHARMA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND: MEGHALAYA: MANIPUR: TRIPURA: MIZORAM AND ARU NACHAL PRADESH)

WRIT PETITION NO. 6308 OF 2006

M/s Randhanijan Meen Silpa Samabai Samitee Limited, Randhanijan, P.O. Malowpathar, District-Jorhat, Through its Secretary, Shri Bhaben Bharali.

Petitioner

Vs.

1) The State of Assam,
Through the Secretary to the Government of Assam, Fishery Department, Assam Secretariat, Dispur, Guwahati-781006.

2) Deputy Secretary to the Government of Assam, Fishery Department, Assam Secretariat, Dispur, Guwahati-781006.

3) Deputy Commissioner, Jorhat, P.O. & Districvt-Jorhat-785001.

4) Shri Prabin Kumar Das, Bhitor Kokilagaon, P.O. Nematighat, District-Jorhat [785111]

Respondents

BEFORE
THE HON'BLE MR. JUSTICE B.K. SHARMA

For the petitioner : Mr. U. Bhuyan,
Mrs. S.D. Bhuyan,
Mr. BK Das,
Mr. B. Chakraborty
Mr. A. Hazarika,
Mrs. M. Talukdar, Advocates

For the Respondents:Mr. P.C. Deka, Sr. Advocate
Mr. B.P. Bora,
Mrs. J. Bora,
Mrs. P. Barman, Advocates.

Date of hearing: 18.01.2007 and 25.1.2007

Date of Judgment: 19.02.2007

JUDGMENT AND ORDER

1. The challenge made in this writ petition is the order by which the respondent No. 4 has been granted extension of the lease period of a fishery with retrospective effect.

2. The fact material for the purpose of disposal of the writ petition as could be gathered from the writ petition and the counter affidavit are as follows:

3. The particular fishery namely No. 19 Barhmaputra Part III (A) fishery was settled with the petitioner and the respondent No. 4 on 50:50 basis for 4 years with effect from 1.4.1990. Such apportionment was made without formally and officially partitioning the fishery. The arrangement continued for a further period of 5 years after expiry of the initial period of 4 years with effect from 1.5.1994. The fishery was divided into 3 parts and they were settled with 3 fishery co-operative societies for a period of 7 years with effect from 14.6.1999.

4. Out of the 3 fisheries, western part of the composite No. 19 Part III (A) fishery was settled with the petitioner's society. The demarcation of the fishery in to three parts was made by order dated 29.4.1999 and the same was put to challenge in WP(C) No. 2902/1999 filed by the writ petitioner. A challenge was also made by the respondent No. 4 in the form of WP(C) No. 3289/1999.

5. The aforesaid two writ petitions were heard analogously and disposed of by judgment and order dated 27.5.2004 holding that the splitting up of the fishery into 3 parts was illegal as the laid down procedure for the purpose was not followed. Accordingly the order that to effect passed by the Government was set aside. However, the settlement made in favour of the 3 parties was not disturbed. A direction was issued to the State Government to examine the matter afresh and then to take steps strictly in accordance with the rules and regulations. It was observed that the composite fishery would remain as such as it stood before splitting up by the impugned order till such time a policy decision was taken in the matter following the due procedure. As regards the plea of the respondent No. 4 in his writ petition that while he was operating the fishery prior to 1999, he had sustained loss, it was provided that the petitioner would be at liberty to approach the State Government with necessary application and in the event of making such application, same would be considered by the State Government in accordance with the law and rules and regulations governing the matter within a period of three months from the date of making such application.

6. After the aforesaid judgment and order, the respondent No. 4 made an application on 14.6.2004 to the Government of Assam in the Fishery Department praying for compensating the loss suffered during the operation of the fishery by him and alternatively to settle the fishery on a long terms extension for 10/15 years. The prayer made in the representation is quoted below:

> It is therefore, prayed your honour that in my tenure of the fishery a total sum of Rs. 3,10,000/- (three lakh ten thousand) was lost.
> Sir, in the year 1999 I filed application before the Govt. for settlement of the fishery. But settlement was given to three Co-operative Societies dividing into 3 parts instead of me, and I filed a writ petition before the Hon'ble Gauhati High Court, WP(C) No. 2902/99.
> Sir, on 27.5.2004 judgment was delivered giving direction to the Govt. for consideration. (order copy enclosed).
> Though there is a lost in operating the fishery during my tenure, all the Govt. revenue was paid.
> Therefore, it is prayed that all the losses to be compensated by the Govt. otherwise the Govt. settled the Barhmaputra Part III-A fishery, Jorhat for a long term extension for 10/15 years in my name and take necessary steps.
> This is my humble submission before your honour.

7. In the meantime, the Government vide Annexure-D notification dated 29.6.2006 bifurcated the composite Brahmaputra Part III (A) fishery into two parts namely Brahmaputra Part III (A) (Eastern Portion) and Brahmaputra Part III (B) (Western Portion) for which liberty was granted by the aforesaid judgment and order. Pursuant to the said notification, the Deputy Commissioner of the district i.e. Jorhat has issued Annexure-E notification dated 11.8.2006 notifying that the boundary of the two fisheries as indicated would come into effect from the date of issuance of the notification. It is the case of the petitioner that when it wa

s his natural expectation that the fishery would be settled as per the normal pr ocedure of tender process, the Government of Assam in the Fishery Department in a most illegal and arbitrary manner issued the impugned Annexure-F order dated 1 9.8.2006 granting extension of the Brahmaputra Part-III (A) fishery to the respo ndent No. 4 for a period of 4 years with effect from the date of delivery of pos session of the fishery. Thus, on the face of it, although, the respondent No. 4 has been granted extension of its lease period which came to an end in 1999, but in effect such extension would be effective prospectively i.e. from the date of delivery of possession in terms of the impugned order dated 19.8.2006.

8. The State respondents have not filed any counter affidavit nor has produ ced the records. However, the respondent No. 4 has filed his affidavit in which it has been contended that he had suffered loss while operating the fishery till 1999 and accordingly the authorities had also furnished reports in his favour f or granting extension. However, before such extension could be granted, his term of lease of the fishery come to an end and the fishery was settled with 3 diffe rent co-operative societies upon its splitting up in to 3 parts. According to th e respondent No. 4, such splitting up of the fishery in to 3 parts having been s et aside, the settlement made in favour of the 3 parties and their running of th e fisheries till expiry of the term in 2006 was inconsequential. It has been con tended that since in the aforesaid judgment and order dated 27.5.2004 a directio n was issued to the State Government to consider his grievance, the Government i n consideration of the case has passed the impugned order granting extension of the fishery and in fact such extension should be deemed to be from 1999, when th e term of the earlier settlement of the fishery with him had came to an end. In this connection, the respondent No. 4 has referred to his representation made to the authorities. According to him, such representation having been made prior t o expiry of the lease and the intervening settlement made in favour of the 3 par ties having been set aside by this Court, the extension granted in his favour is legally valid.

9. I have heard Mr. U. Bhuyan, learned counsel for the petitioner as well a s Mr. P.C. Deka alongwith Mr. B.P. Bora, learned Sr. Counsel assisted by Mr. J.R . Bora, learned counsel for the respondent No. 4. I have also heard the learned State Counsel representing the State respondents.

10. While Mr. Bhuyan, learned counsel for the petitioner placing reliance on the decisions of this Court as reported in (1981) 1 GLR 127 (The Ikop Laidakol Fishing Co-operative Society Ltd. Vs. The State of Manipur & Ors.); (1985) 2 GLR 38 (Shri Jagannath Urang Vs. The State of Assam & Ors.) and (1992) 2 GLR 01 (Ta nuram Tayeng Vs. State of Assam & Ors.) submitted that the extension as has been granted in favour of the respondent No. 4 could not have been granted after lon g expiry of the period of lease in favour of the respondent No. 4 in 1999, Mr. P .C. Deka, learned Sr. Counsel representing the respondent No. 4 submitted that s plitting up of the fishery in to 3 parts and the consequential settlement of th e fisheries with three different parties having been set aside by this Court, th e intervening period from 1999 to 2006 is of no consequence and accordingly the extension granted in favour of the respondent No. 4 should be deemed to be effec tive from 1999, when his earlier term of lease expired. Referring to the represe ntation made by the respondent No. 4 before expiry of the period of lease in 199 9 and the reports thereof, he submitted that by the impugned order, the responde nt No. 4 has been favoured with justice due to the loss suffered by him during t he operation of the fishery by him. Learned State Counsel has also made submissi ons in tune with the submissions made by Mr. Deka.

11. Although, by the impugned order dated 19.8.2006, the respondent No. 4 ha s been shown granted with extension of the fishery for a period of 4 years, but in effect there is no such extension inasmuch as such extension would be effecti ve from delivery of possession of the fishery pursuant to the impugned order. Th e earlier period of lease in favour of the respondent No. 4 has long expired way

back in 1999. Thereafter, the fishery was divided into 3 parts with the settlement of the same with 3 different parties. This Court although has set aside and quashed such splitting up of the fishery into 3 parts, but nevertheless allowed the settlement holders to run the fishery till expiry of their term in 2006. Thus, there is no question of granting any extension to the respondent No. 4 in 2006 on the basis of the prayer made by him in 1998 prior to expiry of the earlier term in 1999 and thereafter on the basis of the representation submitted by him in 2004 (14.6.2004). The representation dated 14.6.2004 was submitted in reference to the aforesaid judgment and order dated 27.5.2004 passed by this Court in WP(C) No. 2902/1999 and WP(C) No. 3289/1999.

12. Dealing with the plea of the respondent No. 4 that it had sustained loss while operating the fishery up to 1999, this Court only provided that it would be open for him to approach the State Government with necessary application and in the event of making such application, the State Government would consider the same in accordance with law and the rules and regulations governing the matter.

13. As per the provisions of the Assam Fishery Rules, 1953 as amended upto date (Rule 12) all registered fisheries shall be settled under tender system of sale. As per the proviso to Rule 12, the Government shall settle a 60% category fishery with special category of Co-operative Societies, Non-Governmental Organizations and Self Help Groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by the tender system.

14. As per the aforesaid provision of the rules, the fishery in question will have to be settled through tender system and it being a 60% fishery, in absence of any declaration that the same has been converted to 40% fishery, it remains the same. In the earlier aforesaid judgment of this Court, it has been categorically held that the fishery is a 60% category one and unless the same is converted to 40% fishery by a conscientious decision in the matter and holding the same by issuing notification, it would remain the same. Although the fishery has been bifurcated into two parts, but there is no notification converting the fishery from 60% category to 40% category, rather in the order dated 29.6.2006 by which the earlier composite fishery has been partitioned into two parts with the boundaries indicated therein, it has been ordered that both the fisheries would be registered under 60% category. If that be so, the said two fisheries cannot be settled with any individual fisherman but will have to be settled with the special category of Co-operative Societies, Non-Governmental Organization or Self Help Groups comprising 100% actual fishermen in the neighbourhood of the fishery by tender system.

15. Although, it was strenuously argued by the learned counsel for the respondent No. 4 that in fact the impugned order is by way of providing extension of the existing lease and such extension would relate back to the stage in which the respondent No. 4 was operating the mahal in 1999 in view of setting at naught the intervening action, such an argument is not acceptable. At the first instance, the earlier period of lease came to an end in 1999 and it was only thereafter fresh settlements were made in favour of 3 different parties upon partitioning of the composite fishery into 3 parts. Although the splitting up of the fishery was set aside, but the settlement holders were allowed to run the fisheries till expiry of their term in 2006.This factual happening from 1999 to 2006 cannot be lost sight of. At the time of passing the impugned order dated 19.8.2006 neither the composite fishery nor the lease period of the respondent No. 4 in respect of the same was in existence. After more then 7 years of expiry of his lease, there could not have been any occasion for granting him extension in reference to a stage as it stood 7 years back. It is in this connection, Mr. Bhuyan, learned counsel for the petitioner has placed reliance on the aforesaid 3 decisions in which it has been held that the Government cannot grant extension after expiry of the period of lease.

16. As has been noticed above, the respondent No. 4, in effect has been given a direct settlement of the fishery namely Brahmaputra Part III (A) for a period of 4 years in the name of granting extension. The period of lease in favour of the respondent No. 4 stood long expired in 1999 and by no stretch of imagination, this position could be nullified as has been done by the impugned order. If the fishery in question cannot be settled with an individual as per the proviso to Rule 12 of the rules and the period of lease of the respondent No. 4 stood long expired (7 years), the Government in the Fishery Department could not have deviated from that position so as to favour the respondent No. 4 by the impugned order in the name of extension taking recourse to the observation made by this Court in the aforesaid judgment and order.

17. For all intent and purpose the fishery in question is a new one and thus even otherwise also there is no question of granting extension to the respondent No. 4 in respect of the new fishery leaving aside the intervening period in between. Much stretch has been given to the observation made by this Court in the aforesaid judgment and order dealing with the plea of the respondent No. 4 that he had suffered loss while operating the composite fishery during the period under his operation. The observation made by this Court is clear enough. It was only provided that the petitioner would be at liberty to approach the State Government and in the event of such approach, his case was to be considered in accordance with the law, rules and regulations governing the matter. Thus, what was provided was to consider his application in accordance with rules and regulations and not otherwise. If the rules and regulation do not permit such extension as has been granted by the impugned order, the Government in the particular Department could not have done so. This Court never recorded any plea regarding the prayer for extension, but only recorded the purported loss sustained by the respondent No. 4 in running the fishery. In the earlier writ petition filed by the respondent No. 4 i.e. WP(C) No. 2902/1999 although a prayer was made for a direction to the official respondents to extend and/or settle the fishery in question with him, but the prayer was never granted and the observation made cannot be said to be in the direction towards consideration of the case of the respondent No. 4 for extension of the lease period. By necessary implication, such a prayer in the earlier writ petition stood rejected.

18. In view of the above, I have no hesitation to hold that the impugned order dated 19.8.2006 (Annexure-F) is not at all sustainable and liable to be set aside and quashed, which I accordingly do. The impugned order dated 19.8.2006 is set aside and quashed. Now the official respondents shall proceed with the matter towards settlement of the fishery in accordance with the rules.

19. Writ petition is allowed. However, there shall be no order as to costs.